

ARKANSAS SUPREME COURT

No. CR 07-1072

ANTHONY WAYNE FULTZ
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered January 24, 2008

APPELLEE'S MOTION TO DISMISS
APPEAL [CIRCUIT COURT OF
BOONE COUNTY, CR 96-279, CR 98-
252, HON. JOHN PUTNAM, JUDGE]

MOTION GRANTED.

PER CURIAM

In 1997, appellant Anthony Wayne Fultz was found guilty by a jury of possession of a controlled substance with the intent to deliver methamphetamine, simultaneous possession of controlled substances and firearms, conspiracy to deliver the controlled substance methamphetamine, criminal use of a prohibited weapon and possession of drug paraphernalia. He was sentenced to an aggregate term of seventy years' imprisonment and fined \$35,000.00. We affirmed the convictions. *Fultz v. State*, 332 Ark. 623, 966 S.W.2d 892 (1998). The court's mandate was issued on May 12, 1998.

On July 30, 1998, seventy-nine days after the mandate was issued, petitioner filed in the trial court a petition for postconviction relief pursuant to Ark. R. Crim. P. 37.1. The trial court denied the petition after a hearing on June 26, 2007.¹ Appellant, proceeding pro se, has lodged an appeal here from the order.

¹It is not clear from the record why there was a delay of nearly nine years in acting on the petition. However, appellant stated in pleadings filed in the trial court that he purposely did not file a petition for mandamus in this court during the interim time frame for personal reasons.

Now before us is the State's motion to dismiss the appeal based on the untimeliness of appellant's Rule 37.1 petition. An appeal from an order that denied a petition for postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (per curiam); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (per curiam).

Pursuant to Ark. R. Crim. P. 37.2(c), if an appeal was taken, a petition under the rule must be filed in the circuit court within sixty days of the date the mandate was issued by the appellate court. As stated, petitioner filed the petition for Rule 37.1 relief seventy-nine days after the date of the mandate in his case, making the petition untimely. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and a circuit court cannot grant relief on an untimely petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Motion granted.